THE COURT
Legacy

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United States Attorneys: District of Michigan 1815-1863, Eastern District of Michigan 1863-1970

By Ross Parker and Cathy Beck

This is the fourth in a series of articles on the history of the United States Attorney's Office. The other articles appeared in December 1999 (Sibley), September 2000 (Goodwin) and June 2003 (Bates).

SOLOMON SIBLEY
(1815-1824) – James Madison

Michigan's first United States Attorney, he was a pioneer of frontier justice, braving Indian trails by horseback to attend territorial courts and helping to establish the rule of law in the territory.

ANDREW G. WHITNEY
(1824-1826) – James Monroe

After serving as a Navy Chaplain, militia captain, and Sibley's law partner, he succeeded him as U.S. Attorney and helped to develop federal legal practices and procedures as waves of settler came to Michigan Territory.

DANIEL LeROY
(1826-1834) – John Quincy Adams

A former Oakland County judge and prosecutor, he helped develop the common law, modifying English law to suit frontier needs. The population increased fivefold despite cholera and the Black Hawk War with the Indians.

DANIEL GOODWIN
(1834-1841) – Andrew Jackson

He helped negotiate the compromise with Ohio in the boundary dispute and represented the federal government in the first U.S. District Court for the District of Michigan, primarily in federal debt collection cases and criminal prosecutions.

GEORGE C. BATES
(1841-1845, 1850-1852) – William Harrison, Franklin Pierce

An active litigator in district and circuit courts, his most notable case was the unsuccessful prosecution of "King" James Jesse Strang, a Morman leader charged with counterfeiting and theft on Beaver Island.

JOHN NORVELL
(1845-1850) – James K. Polk

An active politician, he also served as Postmaster, U.S. Senator, Michigan Senator and Representative on the Board of Regents. As U.S. Attorney he litigated land claim disputes and prosecuted unlawful timber cutting.

THE COURT LEGACY

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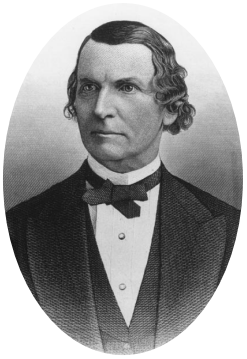
SAMUEL BARSTOW
(1852-1853) – Millard Fillmore

A champion of public education, he arranged financing for free schools for all Detroit children. He also was one of the organizers of the Free Soil Party in 1854.



GEORGE E. HAND
(1853-1857) – Franklin Pierce

His litigation as U.S. Attorney involved unpopular enforcement of the Fugitive Slave Act and actions involving theft of timber, Michigan's most important resource at the time.

JOSEPH MILLER, JR.
(1857-1861) – James Buchanon

He established the U.S. Attorney's Office in the first federal building in 1860 in Detroit, which also housed the district court and the post office. He litigated several important civil cases about the importance of river transportation.

WILLIAM L. STOUGHTON
(1861-1862) – Abraham Lincoln

After one year as U.S. Attorney, he resigned to join the army in the Civil War where he served with distinction as a Colonel of an infantry division until he lost a leg at the battle of Chickamauga. Later he served as Michigan Attorney General and was a two-term Congressman.

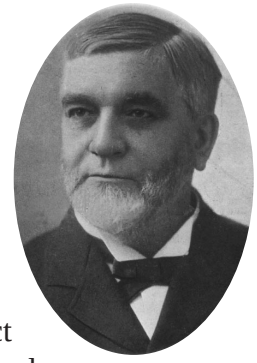
ALFRED RUSSELL
(1862-1869) – Abraham Lincoln, Andrew Johnson

As wartime U.S. Attorney, he litigated internal revenue cases and enforced the unpopular draft law. After the war he prosecuted offenders in the post-war crime wave and enforced new statutes designed to regulate economic growth. When the Eastern and Western Districts were created by Congress in 1863, he became the first Eastern District U.S. Attorney.

AARON B. MAYNARD
(1869-1877) – Ulysses S. Grant

Reducing both autonomy and confusion, the U.S. Attorney came under the supervision of the Attorney General and the Justice Department in 1870. He prosecuted 54 criminal and 26 civil cases in 1873.

SULLIVAN M. CUTCHEON
(1877-1885) – Rutherford B. Hayes

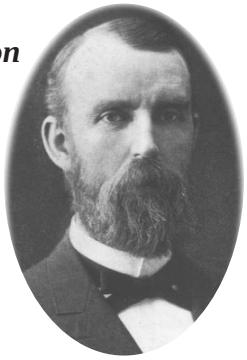


A teacher, Congressman and Michigan Speaker of the House of Representatives, he had 436 convictions, 7 acquittals and closed 233 civil cases as U.S. Attorney. The federal district court in Port Huron was established in 1878.

CYRENIUS P. BLACK
(1885-1890) – Grover Cleveland

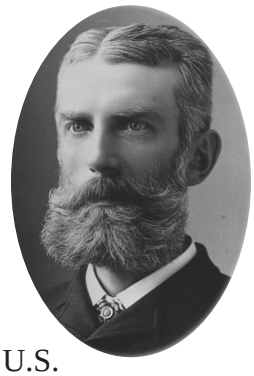
A former state prosecutor, he was a persistent litigator as U.S. Attorney. The office was located in the new federal building, which was used until 1932. Postal theft was an important subject of federal prosecutions. A federal district court in Bay City was established in 1887.

THEODORE F. SHEPARD
(1890-1894) – Benjamin Harrison



Known as a tenacious state prosecutor for Bay County, he and his Assistant U.S. Attorney were active litigators, especially in immigration cases. One of his criminal cases reached the Supreme Court on the issue of whether the admiralty term “high seas” included the Detroit River. The Court concluded it did.

JARED W. FINNEY
(1894 & 1898) – Interim Appointments



As a boy in Detroit, he worked and played in his father’s barn, which was one of the last stops in the Underground Railroad for ex-slaves escaping to Canada. An Assistant U.S. Attorney for 19 years, he was the first interim U.S. Attorney, and he maintained continuity in planned and pending litigation in the office until Presidential appointments were finalized.

ALFRED P. LYON
(1894-1898) – Grover Cleveland

During his term the annual budget for the U.S. Attorney’s Office, including Marshals, jurors, witnesses, prisoner expenses, clerks and Commissioners, was $36,555.50, compared to $12 million a hundred years later. A former teacher, prosecutor, City Attorney, and civil litigator, he was the first U.S. Attorney to receive a salary, rather than be paid based on fees collected.

WILLIAM D. GORDON
(1898-1906) – William McKinley

A former state prosecutor, probate judge and Speaker of the Michigan House of Representatives, he was known as an effective debater, and he was successful in his federal litigation as U.S. Attorney.

FRANK H. WATSON
(1906-1911) – Theodore Roosevelt

Developments in federal law enforcement during his term included the first federal anti-narcotic legislation, anti-trust prosecutions, and federal prisons, as well as the increased use of federal investigative offices, including the Bureau of Investigation, Secret Service, Postal Inspectors, Customs and Internal Revenue Service.

JOHN E. KINNANE
(1916-1921) – Woodrow Wilson

As a wartime U.S. Attorney, he prosecuted violations of the Conscription Act and proceeded unsuccessfully against hundreds of German aliens, all of whom were eventually released when the evidence provided insufficient. His most celebrated case involved the prosecution of U.S. Senator Truman Newberry for corruption, a conviction later reversed by the Supreme Court. Prohibition prosecutions began to swell the United States Attorney's Office caseload.

ARTHUR J. TUTTLE
(1911-1912) – William Taft

The criminal caseload, including internal revenue, post office, banking act, food and drug, interstate commerce and counterfeiting prosecutions, increased significantly during his term. He resigned to accept President Taft's appointment as U.S. District Judge, a post he held for over 30 years.

EARL J. DAVIS
(1921-1924) – Warren Harding

The work of the U.S. Attorney's Office centered on enforcement of the National Prohibition Act. The caseload tripled during his term, three-quarters of which was prohibition-related. He also prosecuted several related public corruption violations. He left the office to head the Criminal Division of the Justice Department.

CLYDE I. WEBSTER
(1912-1916) – William Taft

During his term, the auto industry was born and rapidly developed into the state's chief industry. The U.S. Attorney's Office consisted of the U.S. Attorney, two Assistants and two male clerks, and had an annual salary budget of $7,806.40. Postal violations were the primary category of federal criminal prosecutions.

DELOS G. SMITH
(1924-1927) – Calvin Coolidge

The onslaught of both civil and criminal prohibition cases strained the U.S. Attorney's office resources. During the final year of his term, he and his two Assistants tried 166 criminal cases and closed 1,879 criminal and 779 civil cases. The Bureau of Investigation (later FBI) opened its first office in Detroit in 1924.

ORA L. SMITH
(1927-1928) –
Interim Appointment

He reluctantly accepted the appointment when his predecessor resigned, and he quickly became an expert on prohibition and public corruption cases. He was appointed Special Assistant General at the conclusion of his appointment to continue his prosecution of case fixers and federal officials, including the Chief Clerk, in the Detroit Federal Building.

JOHN R. WATKINS
(1928-1931) – Calvin Coolidge

During his term as U.S. Attorney, he handled a significant increase in narcotics cases along with about 2,000 prohibition cases each year. The roaring 20s' superficial prosperity crashed, and Depression unemployment in Michigan climbed to 25%.

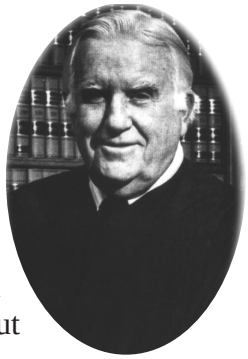
GREGORY H. FREDERICK
(1931-1936) – Herbert Hoover

Appointed as an Assistant United States Attorney in 1925, he was a controversial candidate for the U.S. Attorney position because of his perceived unfriendliness to the prohibition cause. With the repeal in 1932, the caseload reduced considerably, at least until the variety of federal social welfare programs spawned litigation.

JOHN C. LEHR
(1936-1947) –
Franklin D. Roosevelt

Because of Roosevelt's economic program and the wartime developments, he was the U.S. Attorney in a turbulent time of increased federal ligation. He tried two capital cases for bank robbery homicide, in which Anthony Chebatoris was eventually hanged, and for treason, in which Max Stephan was pardoned just twelve hours before his scheduled execution in 1943.

THOMAS P. THORNTON
(1947-1949) – Harry S. Truman



An Assistant since 1936, "Tiger" Thornton earned a reputation as an outstanding trial lawyer, and he was a busy litigator until his appointment as a U.S. District Judge. As both a prosecutor and a judge, he was considered tough but fair, and his natural sense of Irish humor was legendary.

JOSEPH C. MURPHY
(1949) – Interim Appointment

Returning to the U.S. Attorney's Office in 1947 after three years in the Navy, he was entrusted with the most difficult and high profile cases, including over 100 charged in large scale theft from Ford Motor Company. He remained in the office as Chief Assistant until 1953.

EDWARD T. KANE
(1949-1952) – Harry S. Truman

As a former Mayor of Algonac and justice of the peace, he recognized the growing menace posed by drug trafficking. He hired the first African-American, Charles Smith, and the first woman, Janet Kinnane, as Assistant U.S. Attorneys.

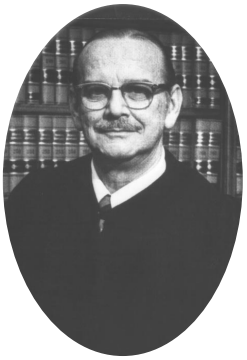
PHILIP ALOYSIUS HART
(1952-1953) – Harry S. Truman

After a short term as U.S. Attorney, he left the office to serve as the Governor's legal advisor, followed by his election as Lt. Governor, and then 18 years as a U.S. Senator where he earned a reputation as the "Conscience of the Senate."

LAWRENCE GUBOW
(1961-1968) – John F. Kennedy

During his term, many social changes resulted in federal litigation involving the office, including the emergence of the New Left, the beginning of the Vietnam War, the recognition of widespread racial discrimination and poverty, and the Detroit riot of 1967. The most numerous cases, however, involved embezzlement and fraud criminal cases, and civil contract actions.

FREDERICK W. KAESS
(1953-1960) –
Dwight D. Eisenhower

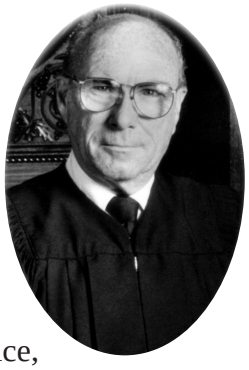


During his term, the U.S. Attorney's Office was involved in several cases which ended up in the Supreme Court on the procedural rights of federally charged conscientious objectors, political contributions by labor organizations, immigration by suspected Communist Party members, and the constitutionality of the estate tax on life insurance proceeds.

ROBERT J. GRACE
(1968-1969) –
Interim Appointment

During his term, the Supreme Court ruled in the government's favor on a pair of FDA cases and a case involving the priority of the government's tax lien over subsequent purchasers.

GEORGE E. WOODS
(1960-1961) –
Interim appointment



As Chief Assistant since 1953, his term bridged the gap until Lawrence Gubow's appointment, particularly necessary because of the ever increasing criminal and civil dockets. After he left the office, he was a prominent trial attorney for 20 years, followed by his appointment as a U.S. Bankruptcy Judge and, in 1983, as a U.S. District Judge. The average annual caseload was 700 criminal and 250 civil cases during his term.

JAMES H. BRICKLEY
(1969-1970) –
Richard M. Nixon

As a former FBI Special Agent and state prosecutor, he was active in supporting adjustments in the criminal justice system in response to the Warren Court's redefinition of criminal procedure and the exclusionary rule. After his brief term, he served as Lt. Governor, a university president and Justice of the Michigan Supreme Court. ■

End Notes

The following primary sources were used in the preparation of this article:

1. G.I. Reed, *Bench and Bar of Michigan,* Bench and Bar Publ. Co. (1925).
2. *Michigan Biographical Dictionary,* American Historical Publications of Wilmington, Delaware (1991).
3. *Michigan Biographies,* The Michigan Historical Commission (1924).
4. C. Lanman, *The Red Book of Michigan, A Civil Military and Biographical History,* F.B. Smith & Co., Detroit (1871).
5. C.R. Tuttle, *General Hisotry of the State of Michigan,* R.D.S. Tyler & Co. Detroit (1873).
6. D.N. Camp, *The American Yearbook & National Register,* O.D. Case & Co., Hartford (1869).
7. Solomon Sibley, George Catlin and Williams Papers, Clarence M. Burton Library, Detroit Public Library, Detroit, Michigan.
8. *Michigan Biographies of State Officers,* Thorp & Godfrey, State Printers and Binders (1888).
9. *Representative Men of Michigan,* Western Biographical Publishing Co., Cincinnati (1896).

Authors' Note

Mr. Parker has been an Assistant United States Attorney assigned to the Detroit office since 1978. Ms. Beck is a paralegal in the office and was primarily responsible for locating the photographs for this article.

WANTED

The Society is endeavoring to acquire artifacts, memorabilia, photographs, literature or any other materials related to the history of the Court and its members. If any of our members, or others, have anything they would care to share with us, please contact the Acquisitions Committee at (313) 234-5049.

U.S. District Courts and the Federal Judiciary: A Summary

This is the third in a series of articles about the federal judicial system and the creation of the Eastern and Western District Courts in the State of Michigan. The first two articles (September and November 2003) provided a historical summary of the federal judicial system, and described how the Judiciary Act and the Bill of Rights developed contemporaneously. This article discusses the provisions of the Judiciary Act and the compromises that were made in its development.

The Judiciary Act's Provisions[1]

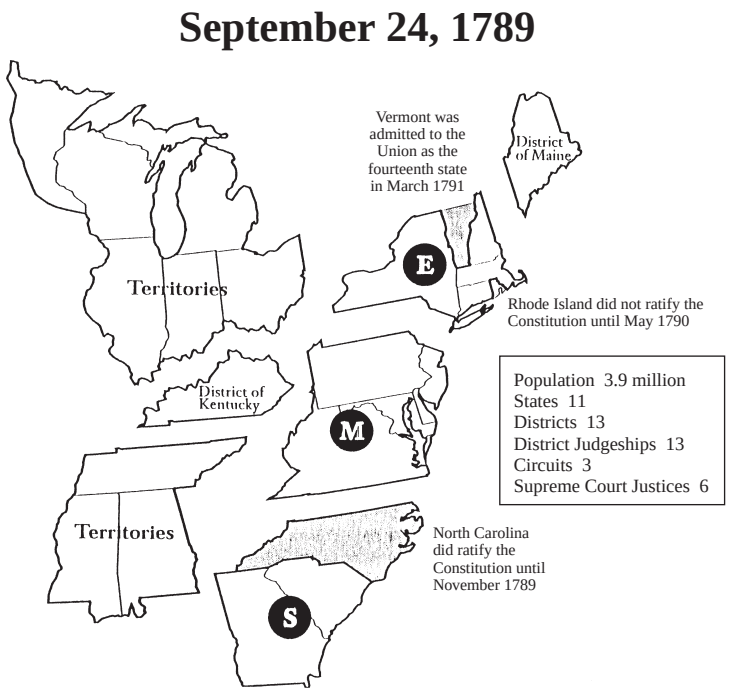
The Judiciary Act's boldest stroke was simply to create a system of lower federal courts to exist alongside the courts already established by each state. (Indeed, more than 200 years later, few countries with federal forms of government have lower national courts to enforce the law of the national government.) There was considerable sentiment in 1789 for leaving trial adjudication to the state courts, perhaps with a small corps of federal admiralty judges.

The Act provided for two types of trial courts – district courts and circuit courts – and gave the circuit courts a limited appellate jurisdiction. It made specific provision for the Supreme Court created by the Constitution. It defined federal jurisdiction. It authorized the courts to appoint clerks[2] and to prescribe their procedural rules.[3] It authorized the President to appoint marshals,[4] U.S. attorneys, and an attorney general.[5]

The Act created thirteen district courts: one for each of the eleven states that had ratified the Constitution, plus separate district courts for Maine and Kentucky, which were then parts of Massachusetts and Virginia. Each district was authorized one district judge. Section 3 of the Act directed each court to hold four sessions each year, in either one or two specified cities in each district. The district courts served mainly as courts for admiralty, for forfeitures and penalties, for petty federal crimes, and for minor U.S. plaintiff cases. Congress authorized differing salaries for the district judges to reflect the wide variations in federal caseload from one state to another. The judge in Delaware received an annual salary of $800, but his counterpart in South Carolina, with its longer coastline and presumably greater admiralty caseload, received $1,800.[6]

The Act placed each district, except Kentucky and Maine, into one of three circuits: an Eastern, a Middle, and a Southern, following the administrative divisions used in the first year of the Revolutionary War.[7] Circuit courts were to sit twice each year in either one or two specified cities of each district of the circuit. For each circuit session, the judges were to be the two Supreme Court justices assigned to that circuit and the respective district judge. These circuit courts were the nation's courts for diversity of citizenship cases (concurrent with state courts, but with a limited removal provision), major federal crimes, and larger U.S. plaintiff cases. (There was no provision for suits against the United States.) The circuit courts were also courts of appeal for some of the larger civil and admiralty cases in the district courts.[8] The Kentucky and Maine district courts exercised the jurisdiction that circuit courts exercised.

The Act established the size of the Supreme Court: a Chief Justice and five associate justices. Section 13 implemented the Court's original jurisdiction as delineated in the Constitution; it was a provision of section 13 that the Court later declared unconstitutional in *Marbury* v *Madison.*[9] The Act spelled out the Court's appellate jurisdiction: review of circuit court decisions in civil cases concerning matters over $2,000 (for some sense of perspective, in 1789 the salary of the Chief Justice was $4,000).[10] The Supreme Court was not given general criminal appellate jurisdiction until the 1890s.[11] The Act's famous section 25 authorized the Court to review state supreme court decisions that invalidated federal statutes or treaties, or that declared state statutes constitutional in the face of a claim to the contrary.



The First Judiciary Act created thirteen districts and placed eleven of them in three circuits: The Eastern, Middle, and Southern.

A Political Compromise

The Federalists made important concessions to get a federal judicial system. The Judiciary Act bowed to the Anti-Federalists in two general ways: It restricted federal jurisdiction more than the Constitution required, and it tied the federal courts to the legal and political cultures of the states.

The Act limited federal trial court jurisdiction mainly to admiralty, diversity, and U.S. plaintiff cases, and to federal criminal cases. There was little dispute about the need to create national admiralty courts. Even opponents of the Constitution recognized the importance of maritime commerce and the government's inability under the Articles of Confederation to provide an adequate judicial forum for resolving admiralty disputes. (Pursuant to an authorization in the Articles of Confederation, the Continental Congress in 1780 had established a U.S. Court of Appeals in Cases of Capture, but that court had been undermined by widespread refusal to honor its mandates.) When proposals to abolish Congress's Article III authority to establish federal courts were made in the state ratifying conventions and in the First Congress, there was usually an exception for courts of admiralty.

A major concession to the Anti-Federalists concerned jurisdiction over cases arising under the federal Constitution or laws: For the most part, unless diversity was present, such federal-question cases could be filed only in state court. The Act made some specific grants to federal courts: the admiralty jurisdiction, for example, and jurisdiction over treaty rights cases.[12] Section 14 authorized federal judges to issue writs of habeas corpus concerning the legality of federal detentions.

Congress added incrementally to federal courts' federal-question jurisdiction-starting in 1790 with certain patent cases[13] – but it didn't grant federal courts a general federal-question jurisdiction until 1875. The absence of such a grant meant less in 1789 than it would mean today or in 1875 because federal statutory law was so limited in the early years.

Other provisions of the Act reflected the same fear of overbearing judicial procedures that was reflected in the Bill of Rights. For example, to alleviate fears that citizens would be dragged into court from long distances, section 3 specified places and terms of holding court in each district, and section 11 provided that civil suits must be filed in the defendant's district of residence. Sections 9 and 12 protected the right to civil and criminal juries in the district and circuit courts, as the Sixth and Seventh Amendments would later do, and section 29 shielded juror selection and qualifications from federal judicial control by directing courts to use the methods of their respective states. Sections 22 and 25 protected jury verdicts from appellate review; these sections responded to vigorous attacks on Article Ill's qualified grant to the Supreme Court of "appellate jurisdiction, both as to law and fact." And, as noted earlier, section 14 authorized federal judges to issue writs of habeas corpus to inquire into instances of federal detention.

A major nationalist victory in the Act was the implementation of the constitutional authorization of jurisdiction in cases "between citizens of different States" and cases involving aliens. Under section 11, the circuit courts, like the state courts, could hear suits when "an alien is a party, or the suit is between a citizen of the State where the suit is brought and a citizen of another State."[14]

Why did the Federalists want this federal diversity of citizenship jurisdiction? It was not simply – perhaps not even mainly – out of fear that state courts would be biased against out-of-state litigants. Rather, Federalists worried about the potential for control over judges by state legislatures, which selected judges in most states and had the authority to remove them in more than half the states. Given the influence of debtor interests in state legislatures, the Federalists worried that state judges might be reluctant to enforce unpopular contracts or generally to foster the stable legal conditions necessary for commercial growth. Diversity jurisdiction was necessary to avoid a return to the conditions under the Articles of Confederation.[15]

Anti-Federalists fought the diversity of citizenship jurisdiction; they believed it "would involve the people of these States in the most ruinous and distressing law suits."[16] To quiet these fears, the Act established a jurisdictional minimum of $500, so that defendants would not have to travel long distances in relatively minor cases, and made state law the rules of decision in the absence of applicable federal law.[17] ■

End Notes

1. An excellent summary of the evolution of the Judiciary Act can be found in David Eisenberg et al, *The Birth of the Federal Court System*, This Constitution, Winter 1987, at 18.
2. Act of Sept. 24, 1789, § 7, 1 Stat. 76.
3. Id. § 17, 1 Stat. 83.
4. Id. § 27, 1 Stat. 87.
5. Id. § 35, 1 Stat. 92-93.
6. Act of Sept. 23, 1789, § 1, 1 Stat. 72.
7. Julius Goebel, Jr., Antecedents and beginnings to 1801, vol. 1 of The Oliver Wendell Holmes Devise, The History of the Supreme Court of the United States 472 (1971).
8. Act of Sept. 24, 1789, §§ 21, 22, 1 Stat. 83-85.
9. 1 Cranch 137 (1803).
10. Act of Sept. 23, 1789, § 1, 1 Stat. 72.
11. Felix Frankfurter & James Landis, The Business of the Supreme Court 109-13 (1928).
12. Act of Sept. 24, 1789, § 9, 1 Stat. 76-77.
13. Act of Apr. 10, 1790, § 5, 1 Stat. 109, 111.
14. Act of Sept. 24, 1789, § 11, 1 Stat. 78-79.
15. *See* Henry Friendly, *The Historic Basis of Diversity Jurisdiction*, 41 Harv. L. Rev. 483, especially at 497-99 (1928). For a somewhat different analysis, see John Frank, *Historical Bases of the Federal Judicial System*, 13 Law & Contemp. Probs. 3, 25 (1948).
16. Independent Chronicle, Boston, Sept. 16, 1790, *quoted in* Warren, *supra* note 3, at 52.
17. Act of Sept. 24, 1789, §§ 11, 34, 1 Stat. 78-79, 92.

Authors' Note

The text of this article is taken from the Federal Judicial Center publication, "Creating the Federal Judicial System," written by Russell R. Wheeler and Cynthia Harrison. The original publication was undertaken in furtherance of the Center's statutory mission to develop and conduct educational programs. The views expressed in the article are those of the authors and not necessarily those of the Federal Judicial Center, however.

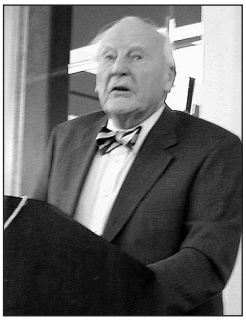
The Keith Case Meeting: An Epilogue

By Judy Christie

The annual meeting of the Historical Society for the United States District Court for the Eastern District of Michigan at the Radisson Pontchatrain Hotel on November 18, 2003, was attended by an overflow crowd who came to hear a discussion of the noted "Keith Case"[1] by several of its participants.


President Sadowski

The Society's president, Jeffrey Sadowski, opened the meeting and set the stage for the speakers by describing some of the events that marked the turbulence of the late sixties in this country: the war in Vietnam was in its fifth year; Nixon was President; student deferments had been canceled by Congress; the voting age had been lowered to 18 from 21; and there were many angry college students who became politically active. Campus strikes in Ann Arbor had taken place and groups like the Students for a Democratic Society (SDS), the Weathermen and the Black and White Panthers had all established chapters in many college towns including Ann Arbor.


Judge Feikens

Mr. Sadowski then turned the podium over to Judge John Feikens who introduced the first speaker, noted civil rights attorney Leonard Weinglass, who served as one of the two out-of-town attorneys for the defendants in this case.[2] Mr. Weinglass began by noting that, unlike the notorious "Chicago Seven" conspiracy case in which he and Mr. Kunstler participated, this case was marked by respect for the dignity of the court because the court as represented by Judge Keith respected the attorneys and defendants in the case. Mr. Weinglass also commended the defendants, John Sinclair, Lawrence Robert "Pun" Plamondon and Jack Waterhouse "Jack" Forrest, all of whom were present, for leading productive lives since their White Panther days, and for being contributors to society by working peacefully against racism and prejudice.


Leonard Weinglass

Mr. Weinglass stressed that what the defendants accused the government of doing was later shown to be an underestimation because five years after the case was closed, information surfaced that, in addition to wiretapping the defendants, the FBI had also wiretapped later conversations taking place between the attorneys and the defendants in the White Panther headquarters. In recounting his experiences in Detroit, Mr. Weinglass closed by emphasizing the lesson that the case holds for us today: when issues of national security take center stage as they have since 9/11, it is very important to protect the right to dissent and the freedom from warrantless search and seizure.

Judge Feikens then introduced Judge Ralph Guy, now a senior judge on the Sixth Circuit Court of Appeals, but who in 1970 inherited *U.S. v. Sinclair,* et al. from U.S. Attorney James Brickley who accepted an offer from William Milliken to be his running mate in the gubernatorial race. Judge Guy noted that he had reason to remember the case recently because in November 2002 as Chief Judge of the Federal Internal Surveillance Court of Appeals he was involved in deciding an appeal in which the government brief cited the Supreme Court Keith case decision as support for its position. Somewhat wryly, Judge Guy said that he thought that was odd since his memory was that the government lost the Keith case. However, the Attorney General was relying on the court's statement in the opinion that it was not deciding the inherent powers of the President to deal with domestic threats to national security or issues involved with activities of foreign powers or their agents. In the Sinclair case the Supreme Court balanced the duty of the President to protect the country from a perceived threat to security


Judge Guy

versus the Fourth Amendment right of the citizens to be free from unreasonable searches and seizures. Again, Judge Guy reminded the audience of the unrest and riots in the country at that time, adding that the radical posture taken by some splinter groups was of special concern to the Nixon administration and the Justice Department. He noted that the same issue, a warrantless wiretapping, was revealed in an appeal of *United States v. Smith*[3] in a case in California just a little earlier. The Appeals Court had remanded the case to the district court and Judge Ferguson had dismissed it. Judge Keith adopted the basis for the judge's findings in the Sinclair case but, Judge Guy said, he added some constitutional meat to the bones of the reasoning. Summing up, Judge Guy said that he believed that the Supreme Court, Judge Keith and Judge Ferguson had gotten it right and that just because an administration said there was a danger didn't mean that it was necessarily so.

Judge Keith

Finally Judge Feikens introduced his good friend and colleague Judge Damon Keith by outlining a few of Judge Keith's many significant accomplishments from his co-chairmanship of the Michigan Civil Rights Commission to his distinguished judicial career in the district and appeals courts, and his leadership of the Bicentennial Commission. The audience rose to give the judge a standing ovation as he took the podium for a passionate defense of the independence of the federal judiciary. Singling out Judge Nancy Edmunds for her recent decision in a case involving hearings for aliens subject to deportation, Judge Keith declared that she and others like her were examples of judges who refused to be intimidated and who uphold the Constitution. He said that the test of our country's law comes in difficult times and that the federal judiciary must be on the front lines. Judge Keith maintained that dissent is an act of faith and that "this country is strong enough to embrace dissent without calling it unpatriotic." He pointed out that everything brought before the court is not necessarily the truth; people sometimes lie even if they are on the government side. Judge Keith concluded by declaring that as long as he was on the court he would "uphold the principle of equal justice under law."

The meeting was adjourned by President Sadowski who reminded everyone that a panel discussion involving several of the same presenters would take place at Wayne Law School later that afternoon and that there would be an opportunity for questions at that time. The meeting was videotaped and a copy of the tape is available for loan by calling the Historical Society at 313-234-5049. ■

End Notes

1. The case in the district court was known as *United States v. Sinclair, et al.* and in the Sixth Circuit Court of Appeals and the United States Supreme Court as *United States v. United States District Court.* For a discussion of the legal and factual issues in the case, please see *The Court Legacy,* Vol. XI, No. 4, published November 2003 and available online at www.mied.uscourts.gov.
2. The other out-of-town attorney was William Kunstler, who died in 1995. Local counsel was Hugh "Buck" Davis. For a profile of the attorneys and defendants, please see *The Court Legacy,* Vol. XI, No. 4, published November 2003 and available online at www.mied.uscourts.gov.
3. *Untied States vs. Smith,* 321 F. Supp 424 (1971).

Photographs courtesy of Dennis M. Barnes.

Author's Note

Judy Christie retired in May 2003 as Administrative Manager of the Clerk's Office of the United States District Court for the Eastern District of Michigan. She is now managing the oral history program for the Court.

Future Articles

The following articles will appear in future newsletters:

"Judicial Portraits and Their Artists" – There are presently about twenty-five portraits of former judges hanging in Eastern District courtrooms. The stories of the artists and the painting of the portraits add another dimension to our judicial history.

"Adam Crosswhite and the 1793 Fugitive Slave Law" – In 1848 the town of Marshall, Michigan, fought to protect a family of slaves who had escaped from Kentucky. After one hung jury, the second trial resulted in a monetary judgment against a Marshall citizen and the "passage of the Fugitive Slave Law of 1850."

"Bankruptcy Court" – Judge Walter Shapero provides an historical perspective on the court.

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